Supreme Court, U.S.
FILED
APR 30 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1448 (3)

In the Supreme Court of the United States

OCTOBER TERM, 1985

LOCAL 560 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether preponderance of the evidence is the proper standard of proof in this civil proceeding under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. (& Supp. II) 1964.

2. Whether the criminal provision in the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 530, precludes a prosecution under the Hobbs Act, 18 U.S.C. 1951, for extortion of union members' rights.

3. Whether petitioners were properly found to have aided and abetted Hobbs Act violations.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A138-A202) is reported at 780 F.2d 267. The post-trial opinion of the district court (Pet. App. A28-A135), setting forth its findings of fact and conclusions of law, is reported at 581 F. Supp. 279. The pretrial opinion of the district court (Pet. App. A1-A27), denying defendants' motion to dismiss, is reported at 550 F. Supp. 511.

JURISDICTION

The judgment of the court of appeals (Pet. App. A203-A205) was entered on December 26, 1985. A petition for rehearing was denied on January 23, 1986 (Pet. App. A206-A208). The petition for a writ of certiorari was filed on February 28, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

This is an action commenced by the United States pursuant to the civil provisions of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. (& Supp. II) 1964. In pertinent part, the complaint sought an order removing petitioners Josephine Provenzano, Michael Sciarra, Stanley Jaronko, and Joseph Sheridan from their positions on the executive board of Local 560 of the International Brotherhood of Teamsters pending the democratic election of officers by the union membership. The government also sought the appointment of a receiver or trustee to serve as the executive board of Local 560 until the union membership could select officers in fair elections. Following a 51-day bench trial, the district court granted the requested injunction and ordered that a trusteeship be established to replace the executive board members pending free and supervised union elections (Pet. App. A28-A135, A136-A137).[1] The court of appeals affirmed (*id.* at A138-A202).

1. The complaint alleged that the "Provenzano Group" —including defendants Anthony Provenzano, Nunzio Provenzano, Steven Andretta, Thomas Andretta, and Gabriel Briguglio—violated 18 U.S.C. 1962(b) by using extortion and murder to acquire an interest in and control of Local 560, an "enterprise" under the RICO statute. The complaint also alleged that the Provenzano Group participated in the affairs of Local 560 through a pattern of racketeering activity, in violation of 18 U.S.C. 1962(c). Finally, the complaint charged that the Provenzano Group engaged in a conspiracy to violate RICO under 18 U.S.C. 1962(d).

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[1]The district court's order has been stayed pending appellate review (Pet. App. A137, A213).

The remaining seven defendants—including petitioners Josephine Provenzano, Sciarra, Jaronko, and Sheridan—were alleged to have aided and abetted the Provenzano Group in its unlawful control of Local 560, in violation of 18 U.S.C. 1962(b) and 2, and to have conspired to control the union, in violation of 18 U.S.C. 1962(d). Josephine Provenzano, the daughter of defendant Anthony Provenzano and the niece of defendants Salvatore and Nunzio Provenzano, has been the secretary-treasurer of the union since June 1978. Sciarra, who was formerly employed by the union as a business agent, became a trustee of Local 560 in May 1981 and is now the president of Local 560. Jaronko, also a former business agent of Local 560, has been a trustee since 1981. Sheridan has been the vice-president of the union since July 1981 and previously served as a union trustee and business agent. Pet. 5; Pet. App. A41-A42.

2. The government's voluminous evidence at trial is described in the opinion of the district court. In brief, it established that the Provenzano Group acquired and maintained control over Local 560 through "a pervasive climate of intimidation" (Pet. App. A89) that had an "intens[e] * * * impact upon the [union]" (*id.* at A96). In particular, members of the Provenzano Group (1) assaulted or murdered persons who opposed their control of the union, (2) appointed and reappointed criminals and persons with records of violence to positions of authority within the union, (3) encouraged the presence of known or reputed criminals at the union's offices, (4) extorted payments from employers in exchange for labor peace, (5) accepted bribes and kickbacks for engaging in conduct detrimental to the interests of union members, and (6) received improper payments from the union treasury (*id.* at A77-A94, A132-A133).

The evidence also established that petitioners aided and abetted members of the Provenzano Group in their efforts to control Local 560 through intimidation and fear. Josephine Provenzano was promoted at the age of 23 from her position as an office worker to fill the vacancy on the executive board after her father was convicted of murder; her primary allegiance on the board was to her father (Pet. App. A41, A51-A53). Sciarra, who also was allied with the Provenzanos, permitted a Provenzano Group associate to supply non-union truck drivers to an employer under contract with Local 560 and made no attempt to organize those employees (*id.* at A69-A72). Jaronko, who was likewise "fiercely loyal to the Provenzanos" (*id.* at A54), ignored "the history of criminal activity on the part of various individuals" associated with the union, including the Provenzanos (*ibid.*); in addition, in 1983 Jaronko assaulted a union member who publicly criticized Salvatore Provenzano (*id.* at A88-A89, A101-A102). Sheridan supported the Provenzanos' interests within the union notwithstanding their criminal convictions, and he took the position that organized crime figures were not involved in the union's affairs (*id.* at A63-A69). Furthermore, Sciarra, Jaronko, and Sheridan testified at trial that they would reappoint members of the Provenzano Group to positions in the union if circumstances permitted (*id.* at A104).

The evidence further showed that in 1981 these petitioners, as members of the executive board of Local 560, appointed Robert Luizzi as a business agent despite his prior convictions for crimes of violence and indications that he had solicited payoffs or bribes for labor peace from a trucking company that had a contract with the union (Pet. App. A93). Petitioners also approved the payment to Anthony Provenzano of pension monies even though the payments provided no discernible benefit to the union membership. In addition, petitioners acquiesced in Nunzio

Provenzano's retention of his position as president of the union following his labor racketeering conviction, and they then appointed Salvatore Provenzano to be president of the union even though he had previously served as president during a period when the Provenzano Group had committed labor racketeering violations (*id.* at A95-A96; see also *id.* at A132-A133).

3. On this record, the district court found that petitioners had aided and abetted the Provenzano Group in acquiring and maintaining control over Local 560, in violation of 18 U.S.C. 1962(b) and 2. See Pet. App. A131, A133.[2] In addition, the court concluded that Local 560 "continues to be a captive labor organization, which the Provenzano Group has dominated through fear and intimidation and has exploited through fraud and corruption" (*id.* at A100), that these illegal activities "are likely to reoccur as long as Local 560 remains a captive labor organization" (*ibid.*), and that "the facts lead inescapably to the conclusion that various nominees and successors will continue the Provenzano Group's 'criminal business' as usual" (*id.* at A100-A101). Specifically, the court found that Josephine Provenzano was appointed to the executive board as her father's "surrogate" (*id.* at A95) and served as "a mere nominee for her incarcerated father" (*id.* at A112). Sciarra was found to have "an involvement with the Provenzano Group, as well as a mind-set, which makes it impossible for him to analyze objectively what must be done within Local 560 to avoid a repetition of the past and to ameliorate the climate of

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[2]The district court held that the "preponderance of the evidence" standard applied in this civil RICO case (Pet. App. A116-A119). In addition, the court ruled (*id.* at A1-A27) that the misdemeanor criminal provision in the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. 530, did not preempt the Hobbs Act, 18 U.S.C. 1951, by removing the extortion of union members' LMRDA rights from the reach of that statute.

intimidation within Local 560" (*id.* at A113). Jaronko, the court found, has "intense * * * feelings of loyalty towards the Provenzanos" (*ibid.*), "identifies himself closely with the Provenzanos' thirty-year history of racketeering activity within Local 560, and is steadfastly opposed to any change in the status quo" (*id.* at A114). Finally, the court found that Sheridan's loyalty to the Provenzanos "has been purchased" (*id.* at A111), and that his "blind[ness]" (*id.* at A69) to the corruption of the union made it "impossible for him to formulate and promote policies which would be reasonably calculated to prevent or discourage further racketeering activity within Local 560 and ameliorate the current climate of intimidation" (*id.* at A111).

Accordingly, in light of petitioners' role in aiding and abetting the Provenzano Group, and in order to neutralize the effects of the previous criminal activities and union intimidation, the district court directed that petitioners relinquish their executive board positions pending fair and democratic elections and that a trustee be appointed to serve as the executive board "for such time as is necessary to foster conditions under which reasonably free, supervised elections can be held, presumptively for eighteen months" (Pet. App. A137). As the court explained (*id.* at A105):

> The current Executive Board members must be removed as a predicate to the restoration of union democracy within Local 560 and to ameliorate and remedy the conditions which have enabled the associates of the Provenzano Group to dominate and exploit the Local for the past thirty years. * * *
>
> Removal of each Executive Board member is also necessary because each one is either unwilling or unable to evaluate objectively the criminal conduct of fellow officers or business agents, or to institute prophylactic measures to ensure as much as possible that past criminal conduct will not be repeated.

The court thus concluded that "Local 560 will remain a captive labor organization as long as the status quo remains unchanged" (*id.* at A104) and that "[o]nly through the imposition of a trusteeship [in place of the executive board] for a curative period of sufficient length can the pattern of abuse be broken and future violations prevented" (*id.* at A115).

4. The court of appeals affirmed (Pet. App. A138-A202). First, finding that there was "ample evidence supporting the district court's subsidiary findings as well as its ultimate finding of aiding and abetting" (*id.* at A175), the court of appeals upheld the district court's determination that "the Executive Board had aided and abetted the extortionate acts" of the Provenzano Group "by (1) making certain appointments and reappointments to union offices; (2) failing to remove certain appointees from office; (3) spending union assets for Anthony Provenzano; (4) permitting access to Local 560's offices by known or reputed criminals; and (5) being recklessly indifferent to the above-mentioned systematic misconduct of fellow incumbent officers" (*id.* at A172-A173; see also *id.* at A175-A185). With particular regard to petitioners, the court of appeals observed that they "were active members of the [Executive] Board" (*id.* at A185), that each petitioner "aided and abetted in at least two predicate Hobbs Act extortions" (*id.* at A184), and that each petitioner was involved in actions to assist the Provenzano Group's control of Local 560 (*id.* at A185). Therefore, the court concluded, each petitioner "is, in his or her own right, culpable for the extortion of the membership's rights" (*ibid.*). The court of appeals thus agreed with the district court that "the Executive Board defendants knew of the[] commission [of crimes by the Provenzano Group] and demonstrated the requisite intent [to facilitate those crimes]" (*id.* at A174).

The court of appeals also sustained the district court's ruling that the proper burden of proof in this civil RICO case is the "preponderance of the evidence" standard (Pet. App. A163-A165 n.12). In addition, the court held that 29 U.S.C. 530 is not the exclusive criminal sanction for violating union members' LMRDA rights and that the extortion of such rights falls within the reach of the Hobbs Act (Pet. App. A169-A172). The court further concluded that petitioners' conduct, even if not independently unlawful under federal labor law, could constitute activity that aided and abetted the Provenzano Group's Hobbs Act violations (*id.* at A179-A180). Finally, the court found that petitioners' conduct was not legitimated by any votes of the union membership in view of the "intimidation and fear leading to coerced judgments on the part of Local members" (*id.* at A183 n.22).

ARGUMENT

In extensive opinions upon which we rely, the district court and the court of appeals correctly rejected the arguments raised by petitioners. The decision below does not conflict with any decision of this Court or any other court of appeals, and further review is not warranted.

1. Petitioners contend (Pet. 10-17) that the courts below erred in holding that the standard of proof in this civil RICO case is "preponderance of the evidence." This contention is without merit. Furthermore, as petitioners acknowledge, the cases in which this burden-of-proof issue has arisen "are few in number" (Pet. 11), and petitioners do not allege that the court of appeals' ruling is inconsistent with the decisions of those other courts (see Pet. App. A163 n.12; see also *id.* at A118).

This Court has recognized that "the preponderance-of-the-evidence standard [is] generally applicable in civil actions." *Herman & MacLean* v. *Huddleston*, 459 U.S. 375, 390 (1983) (footnote omitted). With specific reference

to the burden of proof in civil RICO cases, the Court recently noted that "[t]here is no indication that Congress sought to depart from this general principle." *Sedima, S.P.R.L.* v. *Imrex Co.*, No. 84-648 (July 1, 1985), slip op. 11.[3]

Petitioners' argument for applying a higher burden of proof notwithstanding *Herman & MacLean* and *Sedima* is unconvincing. Petitioners contend (Pet. 15) that civil RICO actions are "akin to criminal proceedings" because they require a showing that the defendant engaged in criminal racketeering activity. But as the Court explained in *Sedima* (slip op. 11), "[i]n a number of settings, conduct that can be punished as criminal only upon proof beyond a reasonable doubt will support civil sanctions under a preponderance standard. * * * That the offending conduct is described by reference to criminal statutes does not mean that its occurrence must be established by criminal standards * * *." See also, *e.g.*, *Herman & MacLean*, 459 U.S. at 389-390; *United States* v. *Regan*, 232 U.S. 37, 47-49 (1914). Moreover, the potential "stigma" (Pet. 15) that petitioners assert will result for defendants in civil RICO cases does not support a higher standard of proof; "[a]s for stigma, a civil RICO proceeding leaves no greater stain than do a number of other civil proceedings" (*Sedima*, slip op. 12), and it is well settled that the preponderance standard generally governs federal statutory causes of action involving fraud or other wrongful conduct. See, *e.g.*, *Herman & MacLean*, 459 U.S. at 390. Likewise, contrary to petitioner's contention (Pet. 15), the provision in RICO for treble damages affords no more reason to apply a higher burden of proof here than in civil suits under the federal antitrust laws, where treble

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[3]The Court in *Sedima* discussed at length the question of the burden of proof in civil RICO suits but found it unnecessary to the disposition of that case to "decide the standard of proof issue today" (slip op. 11).

damages have long been authorized.[4] In any event, damages were not sought in this equitable action, so any argument for imposing a higher standard of proof in treble damage cases would not apply here. Finally, petitioners' argument ignores the countervailing interest of civil RICO plaintiffs—"the very individuals Congress sought to protect"—in obtaining relief if "they [can] prove that it is more likely than not that [the defendant committed a civil RICO violation]" (*Herman & MacLean,* 459 U.S. at 390).[5]

2. Petitioners were found to have violated the RICO statute, 18 U.S.C. 1962(b), by aiding and abetting the Provenzano Group's control over Local 560 through extortion of the union members' rights under the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. 411. The acts of extortion that petitioners aided and abetted were alleged to constitute violations of the Hobbs Act, 18 U.S.C. 1951; those Hobbs Act violations in turn served as the predicate acts of racketeering for petitioners' RICO violation. Petitioners contend (Pet. 17-24) that the misdemeanor provision in the LMRDA, 29 U.S.C. 530, is the exclusive criminal sanction for interference with union members' LMRDA rights and precludes the application of

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[4]Indeed, the civil RICO provision for treble damages was specifically modeled on the federal antitrust laws. See *Sedima,* slip op. 7-8, 9-10 & n.8.

[5]Petitioners' reliance (Pet. 12-14) on *Santosky* v. *Kramer,* 455 U.S. 745 (1982), and *Addington* v. *Texas,* 441 U.S. 418 (1979), is misplaced. Those decisions require a higher burden of proof where, unlike in this case, "particularly important individual interests or rights are at stake," such as a "proceeding to terminate parental rights" or an "involuntary commitment proceeding" (*Herman & MacLean,* 459 U.S. at 389). See also *id.* at 390 (preponderance standard applies in civil fraud proceeding in which defendant can be permanently barred from practicing his profession).

the Hobbs Act to the extortion of those labor rights.[6] Both courts below rejected this contention (see Pet. App. A18-A26, A169-A172), and petitioners acknowledge (Pet. 19) that this is the only court of appeals decision addressing the question.

Initially, it is not at all clear that 29 U.S.C. 530 extends to the extortionate conduct in this case. Entitled "[d]eprivation of rights by violence," Section 530 prevents interference with LMRDA rights "through the use of force or violence, or threat of the use of force or violence." As the lower courts explained, Section 530 "is essentially [an] assault and battery [statute]" (Pet. App. A20) and "prohibit[s] physical assaults on [union] members" (*id.* at A170). Extortion, on the other hand, does not require the direct use of violence against individual union members and can be effected through nonviolent acts. In fact, in contrast to such physical force, the extortionate conduct in this case involved "more sophisticated and indirect physical and economic threats" (*id.* at A172) and largely consisted of a general atmosphere of fear not only of physical harm but also of "economic harm, particularly the loss of the ability to earn a livelihood" (*id.* at A86; see also *id.* at A97, A129). Thus, Section 530 is not specifically "an extortion statute" (Pet. App. A22), and "[t]he Hobbs Act, much more so than section 530, is designed to combat extortion" (*id.* at A172).

In any event, assuming that Section 530 is applicable here, it would not displace the Hobbs Act. It is undisputed that, absent Section 530, the extortionate conduct at issue in this case would fall within the reach of the Hobbs Act. It is also clear that nothing on the face of Section 530 suggests that it was meant to limit or preempt any provision of the

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[6] 29 U.S.C. 530 is not a racketeering activity for purposes of RICO. See 18 U.S.C. (Supp. II) 1961(1).

Hobbs Act that would otherwise apply. On the contrary, Congress declared that the LMRDA is "further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally" against "breach of trust, corruption, [and] disregard of the rights of individual employees * * *." 29 U.S.C. 401(b). In addition, the LMRDA contains a broad savings clause that expressly states that "except as explicitly provided to the contrary, nothing in this chapter shall take away any right or bar any remedy to which members of a labor organization are entitled under * * * other Federal law or law of any State." 29 U.S.C. 523(a).[7] These statutory provisions make clear that Section 530 is not the exclusive sanction for LMRDA violations and does not preclude application of the Hobbs Act.

Petitioners' argument is, in substance, that Section 530 impliedly repeals the Hobbs Act with respect to extortion of union members' LMRDA rights. But it is a " ' "cardinal rule * * * that repeals by implication are not favored." ' " *TVA* v. *Hill*, 437 U.S. 153, 189 (1978) (citation omitted). In this case, where there is neither a " 'clear and manifest' " congressional intention to repeal the Hobbs Act nor a " 'positive repugnacy' " and " 'irreconcilable' " conflict between the two statutes (*id.* at 189-190 (citations omitted)), Section 530 cannot be taken to displace the Hobbs Act. See also *United States* v. *Gilliland*, 312 U.S. 86, 95-96 (1941).

Finally, the fact emphasized by petitioners that Section 530 provides a lesser penalty than the Hobbs Act (Pet. 20-24) does not indicate that Section 530 was intended to be the exclusive sanction and to preclude application of the Hobbs Act. See, *e.g.*, *United States* v. *Batchelder*, 442 U.S.

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[7]We note that while this lawsuit was brought by the government, petitioners' argument would equally mean that adversely affected union members could not sue under civil RICO.

114, 123-125 (1979); *Gilliland,* 312 U.S. at 95-96.[8] "This Court has long recognized that when an act violates more than one criminal statute, the Government may prosecute under either * * *. Whether to prosecute and what charge to file * * * are decisions that generally rest in the prosecutor's discretion" (*Batchelder,* 442 U.S. at 123-124).

In sum, the LMRDA does not suggest that the misdemeanor provision in 29 U.S.C. 530 restricts or supplants the generally applicable felony provision in the Hobbs Act. Likewise, the legislative history cited by petitioners does not indicate that Congress intended to render the Hobbs Act inapplicable to the extortion of union members' LMRDA rights. Compare *Busic* v. *United States,* 446 U.S. 398 (1980). In these circumstances, petitioners' conduct in aiding and abetting the Provenzano Group's extortion was properly alleged to violate the Hobbs Act.[9]

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[8]Petitioners concede (Pet. 19) that the sanctions authorized by Section 530 are "relatively mild."

[9]Petitioners' argument contests the validity of the district court's determination that they violated the RICO statute, 18 U.S.C. 1962(b), by aiding and abetting the Provenzano Group's Hobbs Act extortion of the rights of members of Local 560. But even if petitioners' aiding and abetting were not chargeable under the Hobbs Act and hence not a violation of RICO, their removal from the union's executive board pending fair elections—which is the relief ordered against them by the district court's judgment—would nevertheless be proper because of petitioners' relationship to and control by the Provenzano Group. The court found that Josephine Provenzano is "a mere nominee for her incarcerated father" (Pet. App. A112) and that her "love for her father transcends everything else" (*id.* at A53); that Sciarra is unable "to analyze objectively what must be done within Local 560 to avoid a repetition of the past and to ameliorate the climate of intimidation within Local 560" (*id.* at A113); that Jaronko is "fiercely loyal to the Provenzanos" and his "fealty to the present regime is steadfast beyond question" (*id.* at A54); and that Sheridan had been "bought" (*id.* at A69) and "his loyalty has been purchased" (*id.* at A111). Based on this record, the court determined that "Local 560 will remain a captive labor organization as long as the status quo remains unchanged" (*id.* at A104), and

3. Finally, petitioners argue (Pet. 24-26) that their actions could not support a finding that they aided and abetted the Hobbs Act violations because their conduct, standing alone, would not have violated the LMRDA. However, it is commonplace that acts not in themselves illegal can aid and abet the commission of a crime. Beyond that, the fact that petitioners' activities were not independently violative of one statute—the LMRDA—does not serve to excuse that conduct if it violated another statute—the Hobbs Act. Thus, even if petitioners had been charged as principals in the Hobbs Act violations, it would have been no defense to the charges of extortion that they had not also violated the LMRDA. *A fortiori,* where petitioners were charged as aiders and abettors, it was sufficient to find, as both courts below did, that petitioners "knew of the[] commission [of the Hobbs Act offenses by the Provenzano Group] and demonstrated the requisite intent [to facilitate them]" (Pet. App. A174).[10]

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therefore that "[o]nly through the imposition of a trusteeship for a curative period of sufficient length can the pattern of abuse be broken and future violations prevented" (*id.* at A115). Accordingly, the court ruled that "[t]he current Executive Board members must be removed as a predicate to the restoration of union democracy within Local 560 and to ameliorate and remedy the conditions which have enabled the associates of the Provenzano Group to dominate and exploit the Local for the past thirty years" (*id.* at A105). Thus, whether or not petitioners aided and abetted labor extortion in violation of the Hobbs Act, their involvement with the Provenzano Group justified their removal from union office in the exercise of the district court's broad remedial power under 18 U.S.C. (& Supp. II) 1964 to eliminate the corruption and intimidation of Local 560 and to restore union democracy.

[10]To the extent that petitioners seek to raise what they acknowledge to be a "very fact specific" (Pet. 26) challenge to the aiding-and-abetting finding concurred in by both courts below, their contention does not call for this Court's review (see *United States* v. *Doe,* 465 U.S. 605, 613-614 (1984)). In any event, that claim is without merit for the reasons previously discussed. Petitioners' suggestion (Pet. 24, 25) that the vote

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 1986

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of the union membership served to ratify their acts is "unpersuasive in light of the district court's findings of intimidation and fear leading to coerced judgments on the part of Local members" (Pet. App. A183 n.22).

DOJ-1986-04